BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:	)	
	)	
DEPARTMENT OF SAFETY	)	
	)	
v.	)	
	)	**DOCKET NO. 19.01-102033J**
	)	**DOS Case No. H5496**
$10,000.00 in U.S. Currency	)	
CLAIMED BY: Darnell White	)	
SEIZED FROM: Darnell White	)	
SEIZURE DATE: 7/17/08	)	
	)	

INITIAL ORDER

This matter came to be heard on May 27, 2009, before Marion P. Wall, Administrative Judge, Office of the Secretary of State, and sitting for the Commissioner of Safety in Chattanooga, Tennessee. The State was represented by Ms. Lori Long, Staff Attorney for the Department of Safety. The Claimant represented himself.

The issue in this hearing was the proposed forfeiture of $10,000.00 in U.S. Currency seized from the Claimant on July 17, 2008.

After consideration of the entire record herein, including the evidence adduced at the hearing and the argument of the parties, it is determined that the State has not shown by a preponderance of the evidence that the property at issue is subject to forfeiture. It is therefore ORDERED that the subject property be RETURNED to the Claimant. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On July 17, 2008, Officer Jason Duggan of the Chattanooga Police Department stopped the vehicle in which the claimant was riding for speeding. The vehicle also had a

broken tail light and a frame on the license plate which obscured part of the plate. There is no question raised in this matter as to the propriety of the stop.

2. Neither the Claimant nor the other adult in the vehicle had a driver's license. Both were nervous. The vehicle belonged to neither. They told the officer that they were heading home to Detroit from Atlanta, where they had gone for a funeral. Other than the Claimant, the occupants, including the two minors, had no luggage to speak of.

3. Upon being given permission to search the vehicle, Officer Duggan found the subject $10,000.00 in the side wall of the vehicle between the frame and the quarter panel. Officer Duggan, who is a canine handler, had his dog examine the money. The dog alerted to the money, but not the vehicle.

4. Upon further questioning, the occupants of the car, including the two minors, gave conflicting stories of what they had been doing in Atlanta. Based on the conflicts in the statements, the nervousness of the occupants of the vehicle, the untruthful statements made, how the money was concealed, and the fact that the dog alerted on the money, Officer Duggan seized the money as narcotics proceeds.

5. No drugs of any kind were found. There is no proof of any drug transactions, or drug activity.

6. The Claimant testified. He stated that he had gone with his friend to Atlanta to help drive. He did not know the deceased. They had left the funeral after Mr. Peeples, his friend and co-driver, got into an argument with other family members at the funeral. He stated that the money was his, and that he was holding that amount in cash because he was hiding the money from his wife. The money, he said, came from the couple's savings.

7. The State introduced certified records of convictions of Mr. White. He has been convicted of four felonies, three of them drug related. These convictions were introduced to impeach the credibility of the Claimant, as well as whatever other evidentiary value they might have.

ANALYSIS AND CONCLUSIONS OF LAW

1. T.C.A. §53-11-451 provides in pertinent part:

(a) The following are subject to forfeiture:

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(6)(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, as amended, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4;

2. The proof establishes that the Claimant was traveling from Detroit to Atlanta, and then back to Detroit, with a large sum of money hidden in the vehicle on the return trip. There were no drugs present. There was no proof of any drug activity. In fact, there is no proof of any relationship to drugs, other than the rather unsurprising fact that the drug dog hit on the money. At best, this establishes that at least one of the bills among many had been in close proximity to drugs at some point in the not too distant past. This proves very little, considering that the same could likely be said of at least one bill in any group of currency, and it certainly does not establish that the Claimant was the person in possession of the currency when it was in proximity to drugs. The dog did not alert to anywhere in the vehicle, so apparently there is no reason to think that there were drugs in the vehicle at any time in the not too distant past.

3. Under the rules of evidence, Mr. White's convictions for narcotics offenses can be considered to impeach his testimony, but may not be considered for the purpose of proving that he was later engaged in drug activity. TRE Rule 404(b).[1]

4. T.C.A. §4-5-313 provides that agencies shall give probative effect to evidence admissible in a court, and may also consider other evidence if necessary to ascertain facts not susceptible of proof under the rules of evidence, and where the evidence is of a type reasonably relied upon by reasonably prudent men in the conduct of their affairs. Evidence of prior convictions, however, cannot be said to provide proof of current activity; it simply is not relevant. This issue is not what he has done in the past; it is what he was doing this particular day.

5. It is more than likely that the Claimant was up to no good. The occupants of the vehicle could not get their stories straight. It is entirely possible the girls were in the vehicle to provide an innocent appearance. Neither the Claimant nor the other adult inspire confidence. In short, the officer was more than justified to be suspicious.

6. Whatever was afoot, the only statutory basis for forfeiting the property of people thought to be up to no good is if the money is shown to probably be either drug proceeds or was going to be furnished for drugs. There was no proof of the Claimant delivering drugs to Atlanta from Detroit, which would make the money drug sale proceeds and subject to forfeiture. In fact, the dog did not alert to the vehicle itself. There is no proof of any intent to buy drugs with the money, which would make the money something intended to be used to purchase drugs, and likewise subject to forfeiture. The statute only allows forfeiture of money for these two reasons.

---

[1] The State argues that under *Lettner v. Plummer*, 559 S.W.2d 785 (Tenn. 1977) , the undersigned can consider the previous convictions in determining whether the State has met its burden of proof; that is, the convictions of prior drug activity can be used to establish current drug activity. This assertion is rejected. Firstly, Lettner was decided prior to the adoption of the Rules of Evidence, and TRE 404(b) specifically forbids proof of prior bad acts to establish character in order to show action in conformity with the character trait. Secondly, it is not clear what relevance a prior conviction has in showing current activity. TRE 404 deals with relevance of prior bad acts, and only finds them relevant on specific issues, such as identity, absence of mistake, etc. It does not find them relevant to show, for example, that since an individual was previously convicted of drug possession he is currently also guilty of drug possession. TRE 402 excludes irrelevant evidence. Thus, the exception in T.C.A. §4-5-313 is not available, inasmuch as the evidence of prior convictions is not relevant to the issue of the Claimant's current activity.

There is no proof whatsoever of either. The proof shows that an unsavory character was in possession of a large sum of money for which he had a tenuous, though somewhat plausible, explanation. Totally discrediting this explanation, that still leaves the State with the burden of showing that the money either was intended to be furnished for drugs or was proceeds from drug sales. This the State has not shown. *Goldsmith v. Roberts*, 622 S.W.2d 438 (Tenn. 1981) (Evidence that unemployed claimant, known to vice officers, was in possession of drugs and relatively large amount of money did not establish money was proceeds of drug sales). The State having failed to carry the burden of proof, the money is not subject to forfeiture.

It is therefore ORDERED that the subject property be **RETURNED TO THE CLAIMANT.**

Entered and effective this 25th day of August, 2009.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25th day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:	)	
	)	
TENNESSEE DEPARTMENT OF SAFETY	)	
	)	
v.	)	**DOCKET NO. 19.01-110773J**
	)	**DOS CASE: K6369**
CURRENCY: $2112.00	)	
SEIZED FROM: MARCUS STORY	)	
DATE OF SEIZURE: 6/13/10	)	
CLAIMANT: HANNAH KILGORE	)	
	)	

INITIAL ORDER

This administrative proceeding was heard on March 16, 20110, in Fall Branch, Tennessee, before Anthony Adgent, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris represented the State. Claimant was represented by The Honorable David Crockett, Esq.

The subject of this hearing was the proposed forfeiture of $2112.00 seized from Mr. Marcus Story, Claimant, on June 13, 2010.

After reviewing the record and evidence presented at the hearing it is determined that the subject property should be not be forfeited to the seizing agency.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 13, 2010, Officer David Hilton of The Johnson City Police Department answered a domestic dispute at the address of the Claimant and her boyfriend, Mr. Marcus Story.

2. During the course of the resulting investigation Officer Hilton and other officers from JCPD found the currency in question in the possession of Mr. Story.

3. The money was seized under T.C.A. 53-11-4514.

4. Claimant claims the money is hers and has asked for its return.

CONCLUSIONS OF LAW AND ANALYSIS

1. Property subject to forfeiture pursuant to T.C.A. 53-11-451(a)(6)(A)

2. The State has the burden of proving by a preponderance of the evidence that the property seizure was warranted under the applicable statutes.

3. Officer Hilton testified that upon arrival at the residence of Mr. Story and the Claimant that he found Mr. Story behind the building...

4. He testified that he searched Mr. Story and found $2112.00 in his pocket. He said that Mr. Story told him that the money was not his. "He said the money was Ms. Kilgore's".

5. The Officer said that a Drug Dog was brought to the residence.

6. The dog "hit" on a piece of paper in Mr. Story's car.

7. No drugs were found in the car.

8. No drug paraphernalia was found in the car.

9. No drugs were found on Mr. Story

10. No drug paraphernalia was found on Mr. Story.

11. Nothing indicating the sale of drugs was found in the car or on Mr. Story

12. Officer Hilton said that he seized the money "because of the dog".

13. The Officer testified that the area was not known for drug trafficking.

14. No drug charges were placed against Mr. Story.

15. The Officer testified that he never spoke to Ms. Kilgore.

16. The Officer testified that Story told him that the money belonged to Ms. Kilgore.

17. Mr. Story testified that he told the officers that the money belonged to his girlfriend, Ms. Kilgore, with whom he lived.

18. Testified that the money was part of her tax return and he took it out of the residence when he left after they argued.

19. Story testified that he works as a singer and has an "on line" business and a business license but has not filed income tax in 4 or 5 years.

20. He denied the sale or possession of any drugs.

21. Ms. Kilgore testified and corroborated all of Mr. Story's testimony

22. She gave details of her employment and also provided banking records to support their contention that the seized cash came from her tax return.

23. The State failed to provide a shred of any material or substantial evidence that the money in question was legally seized or that it should be forfeited.

. It is therefore **CONCLUDED** that the State has not met its burden of proof by a preponderance of the evidence by providing material and substantial evidence to support their case.

15. It is therefore **ORDERED** that the subject currency **SHALL NOT BE FORFIETED AND SHALL BE RETURNED TO THE CLAIMANT.**

This Initial Order entered and effective this _____ day of _____ 2011.

_____
Anthony Adgent
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this _____ day of _____ 2011.

_____
Thomas Stovall, Director
Administrative Procedures

BEFORE THE COMMISSIONER OF
THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:	]	
	]	
DEPARTMENT OF SAFETY,	]	
	]	
vs.	]	**DOCKET # 19.01-112786J**
	]	**D.O.S. # K9410**
$1,396.00 in U.S. Currency	]	
SEIZED FROM: Arthur Boothes	]	
SEIZURE DATE: 10/10/10	]	
CLAIMANT: Arthur Boothes	]	
SEIZING AGENCY: T.H.P.	]	

INITIAL ORDER

This contested administrative matter was heard in Memphis, Tennessee on June 8, 2011, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Department of Safety, represented the State/Seizing Agency. The Claimant was represented by his legal counsel, Mr. Robert Hardy, Jr.

The subject of this hearing was the proposed forfeiture of the Claimant's money, based on the seizing agency's assertion that it was acquired in violation of the Tennessee Drug Control Act. Upon full consideration of the record in this case, it is determined that the Forfeiture Warrant should be dismissed, and the currency should be returned to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On October 10, 2010, a Trooper with the Tennessee Highway Patrol stopped Arthur Boothes ("the Claimant") for driving 108 MPH in a 65 MPH zone. The car he was driving was provided to the Claimant by his uncle, who was the only passenger in the car. The Trooper approached the Claimant, and while talking to him, detected a strong smell of marijuana coming from the inside of the car. He arrested the Claimant, and charged him with reckless driving. A search of his person and the car for contraband

revealed no measurable quantity of drugs,[1] paraphernalia, weapons, or other illegal items or substances.

2. The Trooper called for a drug-sniffing dog to come to the scene of the arrest.[2] Although no measurable quantity of drugs was found in the car, a quantity of U.S. currency ($1,396.00) was found in the glove box. Believing the money to be the proceeds of drug transactions, the Trooper seized the money, and later sought and obtained a Drug Asset Forfeiture Warrant for it. (No drug-related charges were filed against the Claimant.) The Claimant filed a Petition for the return of his money, resulting in the instant hearing. No other claims were filed for the money.

3. At the hearing, the arresting Trooper testified that he had no direct evidence linking either the Claimant or the seized cash to any drug transactions. As far as he knew, the Claimant, had never been charged, convicted or suspected of any illegal drug activity. His seizure of the cash, he said, was based on the "totality of the circumstances" surrounding the Claimant's arrest. He listed those "circumstances" as: (1) The fact that the car was rented; (2) The fact that the money was found in the glove box instead of on the Claimant's person; (3) The total amount of money found, the denominations of the currency, and the fact that it was bound by a rubber band. When pressed, however, he was unable to articulate how any of those circumstances supported his belief that the currency was the proceeds of a drug transaction.

4. The Claimant testified at the hearing, just as he had told the Trooper at the time of his arrest, that the money in the glove box was not drug proceeds, but was earned at his job as a material handler at Jabil Services, in Memphis. He said that he worked full-time, earning $10.25 per hour, plus frequent overtime, and that he had received a large sum in

[1] The Trooper testified that he found plant residue in the car, which he did not collect for analysis or submit as evidence at the hearing.

[2] The Trooper did not testify that he had received any training that would qualify him to work with drug dogs, and for an undisclosed reason, the dog's handler was not a witness at the hearing. Consequently, there was no reliable evidence at the hearing related to the dog's response to the car, and therefore, no weight was assigned to any testimony related to the dog's activities at the arrest scene. Other than the Trooper's own perception of a general marijuana smell in the car, no evidence about the smell of drugs in or on the vehicle or its contents will be given any consideration.

the form of a bonus check shortly before his arrest. After paying his monthly bills, he routinely put the rest in the bank, and made withdrawals from time to time. When stopped by the Trooper, the Claimant and his uncle were returning from a prison visit to another uncle. Upon arriving at the prison, they had been advised to leave any large sums of money in their car, because it would not be permitted inside the prison. When they returned to the car, the Claimant left the money in the glove box, since they were going directly home. Although all of this was disclosed by the Claimant at the time of his arrest, the Trooper testified at the hearing that he had done no investigation to confirm or negate the Claimant's assertions about his employment status or financial/banking transactions. The Claimant's testimony was consistent, and highly believable. His demeanor supported a finding that he was a credible witness.

CONCLUSIONS OF LAW and ANALYSIS

A. Claimant's Standing to File/Pursue his Claim:

1. During its closing argument, the State challenged the Claimant's legal standing to assert a claim for the seized currency. The Department of Safety's *Rules of Procedure for Asset Forfeiture Hearings* provide that, once the issue is raised, the claimant has the burden of proving legal standing to pursue a claim. Rule 1340-2-2-.15(3), TENN. COMP. R. & REGS.; *see also* TENN. CODE ANN. §53-11-201(f)(A). Also pursuant to Departmental Regulations, once it is properly raised, the issue of legal standing must be determined prior to a ruling on the merits of a contested case. If standing is not proven, the claim may be dismissed, and, where otherwise appropriate, the property may be forfeited to the State. Rule 1340-2-2-.16(1)(g)(3), TENN. COMP. R. & REGS.; *See also*, *Jones v. Greene*, 946 S.W.2d 817 (Tenn. App. 1996).

2. To prove legal standing, the Claimant must establish that he has an ownership[3] interest in the seized property that was acquired in good faith. TENN. CODE ANN. § 53-

[3] Black's Law Dictionary [4th Ed., Rev.] defines "ownership" as "The complete dominion, title or proprietary right in a thing or claim. The entirety of the powers of use and disposal allowed by law."

11-201(f)(1) & *Urquhart v. Department of Safety*, 2008 WL 2019458 (Tenn. Ct. App.)[4] Without such an ownership interest, a party lacks standing to challenge the forfeiture. See *Jones v. Greene, supra; U.S. v. $515,060.42 in U.S. Currency,* 152 F.3d 491, 497(6th Circuit 1998).

3. In this case, the State argues that the Claimant cannot prove his ownership of the money because it was found in the glove box and the money bore no specific indicia reflecting the Claimant's ownership. Currency rarely bears the name of its owner. However, the money was found in the glove box of a car being driven by the Claimant. Although the money was not on his person at the time of the stop, the Claimant was thus in constructive possession of the money at the time of the traffic stop.[5] Also, since the Claimant's uncle was a passenger in the car, his uncle was the only other person with a colorable claim to the money. Neither the uncle nor anyone else claimed ownership of the money.

4. Weighing all of the factors surrounding the seizure of the currency, it is concluded that the Claimant has established by a preponderance of the evidence, that he is the owner of the seized $1,396.00 in U.S. currency. Accordingly, the State's argument that the Claimant does not have legal standing to file and pursue his claim is without merit, and the case will be considered on the evidence presented during the hearing.

B. Consideration of the Forfeiture Request:

1. The *Notice of Seizure* and *Drug Asset Forfeiture Warrant* in this case were issued pursuant to TENN. CODE ANN. 53-11-451(a)(6)(A), which provides that "Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, . . . all proceeds traceable to such

[4] Although TENN. CODE ANN. § 53-11-201(f)(1) merely requires that the Claimant "Has an interest in such property which the claimant acquired in good faith," the Court in *Urquhart* made it clear that the interest referred to is an ownership interest.

[5] Without question, if drugs had been found in the car's glove box, the State would not hesitate to argue that the driver was in possession of the drugs, and would have likely sought prosecution for illegal drug possession.

an exchange, and all moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act . . . " are subject to forfeiture under the law.

2. The Tennessee Department of Safety bears the burden of proof in forfeiture proceedings, and must therefore prove, by a preponderance of the evidence, that the seized money was "furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, . . . proceeds traceable to such an exchange, [or] moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act . . . " [*See*, TENN. CODE ANN. § 40-33-210(a).] Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 40-33-210(b)(1); and, *Rule 1340-2-2-.15,* TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety.*

3. In the instant case, the only facts proved by the State established: (1) that a Trooper stopped the Claimant, who was driving a car far in excess of the speed limit; (2) that the Trooper smelled the odor of marijuana emanating from the car, but a search of the car produced no illegal drugs or contraband; (3) that $1,396.00 was found in the glove box of the car; (4) that the driver claimed ownership of the money, explained where he got it, and the Trooper did no follow-up investigation to prove or disprove the Claimant's explanation; and (5) that the Trooper had no evidence connecting the money or the Claimant with <u>any</u> illegal drug activity. Those facts do not prove a sufficient nexus between the seized currency and illegal drug activity.

4. As provided by the statutes cited above, the State's failure to prove that the seized currency was "furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, . . . proceeds traceable to such an exchange, [or] moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act . . . " operates as a bar to the proposed forfeiture.

Accordingly, it is hereby concluded that the Claimant sufficiently established his standing to file and pursue his claim for the return of the seized currency.

It is further concluded that the State's evidence is insufficient to prove that the seized currency was "furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, . . . proceeds traceable to such an exchange, [or] moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act . . . "

IT IS THEREFORE ORDERED that the proposed forfeiture is denied, and the subject $1,396.00 in U.S. currency shall be returned to the Claimant, Arthur Boothes.

Entered and effective this _____ day of _____ 2011.

_____
J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of _____ 2012.

_____
Thomas G. Stovall, Director
Administrative Procedures Division

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF: **$596.25 in U.S. Currency** **Seized from: Autumn White** **Date of Seizure: November 20, 2010** **Claimant: Autumn White** **Seizing Agency: Dekalb County Sheriff's Department**	**DOCKET NO: 19.01-112798J**

INITIAL ORDER

This matter was heard in Cookeville, Tennessee, on September 8, 2011, before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, Attorney for the Tennessee Department of Safety represented the Department of Safety. The Claimant, Autumn White was present and not represented by counsel.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of T.C.A. §53-11-201 et seq. and §40-33-201 et seq.

After review of the record and arguments of the parties, it is DETERMINED that the seized currency should be RETURNED to the CLAIMANT.

This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On November 20, 2010, Deputy Nathan Thomason, arrested the Claimant Autumn White, for driving under the influence.

2. A search of her purse revealed $596.25 in U.S. currency along with 12 unidentified pills.

3. Grievant, presented evidence at the hearing that she is gainfully employed receiving regular paychecks.

4. Grievant presented her payroll records from June 6, 2009 through November, 25, 2010 as evidence that she was employed. She further testified that the $596.25 was earned income from this employment. Her testimony is found to be credible.

5. She also presented as evidence her receipt from the Register of Deeds for Dekalb County dated October 22, 2010, where she had purchased a home in the few weeks prior to her arrest.

6. The State presented no evidence was as to the identity of the pills that were discovered. Furthermore, they presented no evidence that the pills, if identified as scheduled drugs, were of an amount that would qualify for resale.

7. The State presented no evidence that a sale of drugs had occurred.

CONCLUSIONS OF LAW

1. The State has the burden of proving by a preponderance of the evidence that the seized property is of a nature making its possession illegal, or that it was used in a manner making it subject to forfeiture, and failure to carry the burden of proof is a bar to any forfeiture. T.C.A. §53-11-201(d).

2. Tennessee Code Annotated, Section 53-11-451(a)(6)(A), authorizes the forfeiture of "[e]verything of value furnished, or intended to be furnished in exchange for controlled substance[,] . . . . all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used to facilitate any violation of the Tennessee Drug Control Act.

3. The State is not required to trace money or proceeds to specific drug sales, so long as there is some proven nexus to connect the seized property with sales activity.

Circumstantial evidence can be used to make this connection. *Lettner v. Plummer*, 559 S.W.2d. 785 (Tenn. 1977); *Goldsmith v. Roberts*, 622 S.W.2d. 438 (Tenn. App. 1981).

The state has failed to prove by a preponderance of the evidence that the subject $596.25 in U.S. currency is the result of any illegal activity or the result of any drug sale.

It is therefore ORDERED that the $596.25 in U.S. currency shall be RETURNED to the Claimant, Autumn White.

It is so ORDERED.

This Order entered and effective this _____ day of _____, 2011.

_____
Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of _____ 2011.

_____
Thomas G. Stovall, Director
Administrative Procedures Division

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:	)	
	)	
TENNESSEE DEPARTMENT OF SAFETY	)	
	)	
v.	)	DOCKET NO. 19.01-114905J
	)	[D.O.S. Case No. L6333]
	)	
Four Thousand One Hundred Twenty-Six Dollars ($4,126.00) in U.S. Currency Seized from: Keith Burton Date of Seizure: May 31, 2011 Claimant: Keith Burton Lienholder: N/A	)	

INITIAL ORDER

The contested case hearing in this matter came forward on November 28, 2011, in Dyersburg, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney, Tennessee Department of Safety, represented the State. The Claimant, Mr. Keith Burton, was represented by Attorney David Hamblen of the Union City bar.

The subject of this matter was the proposed forfeiture of the subject Four Thousand One Hundred Twenty-Six Dollars ($4,126.00) in U.S. Currency

which was seized as proceeds, as facilitating, as obtained in an exchange, as intended for use, or otherwise involved in an exchange, in violation of the Tennessee Drug Control Act, thus making the currency subject to seizure, pursuant to T.C.A. §53-11-451.

After consideration of the record, it is **DETERMINED** that the subject currency should be **RETURNED** to Claimant Keith Burton.

This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On May 31, 2011, Officer Scott Watkins, of the Union City Police Department, assigned to the 27th Judicial District Drug Task Force, stopped a vehicle, being driven by Claimant Keith Burton for a window tint violation. There was a strong smell of marijuana in the vehicle. Drug Dog Kodiak alerted to the vehicle. The possible forfeiture of the vehicle will be addressed in a separate proceeding with a separate Claimant.

2. Claimant Burton was on probation for a "cocaine charge" in Kentucky. The cocaine charge was not for trafficking cocaine.

3. During the course of the stop, three (3) ten dollar ($10.00) bags (dime bags) of marijuana were

discovered, along with Four Thousand One Hundred Twenty Six ($4,126.00) in US Currency. The US Currency was on Claimant Burton's person.

4. Claimant Burton is a student at the University of Tennessee at Martin. Claimant was not working at the time of the stop. Claimant Burton stated that some of the money on his person was student loan money. Claimant Burton indicated that some of the money was from the recent sale of his Chevrolet Suburban vehicle. Claimant was traveling to the Union City/Jackson area to obtain another vehicle, when stopped. Claimant does not have a bank account.

5. Given the large amount of cash, the subject US Currency was seized.

6. Officer Watkins testified that a cellular phone, that was also seized, had messages on it that appeared to relate to narcotics sale activity. At the hearing, Claimant Burton denied that the seized telephone belonged to him. Claimant insisted that his telephone is an I-Phone, not a regular cellular phone.

7. On December 7, 2011, the State filed an Exhibit that showed the specific type of phone that was seized. The

photograph supported Claimant Keith Burton's testimony that the seized phone was not an I-Phone. It was the seized phone that rung with an inquiry about a drug transaction. It is **DETERMINED** that the seized cellular phone belonged to someone other than Claimant.

8. Officer Watkins testified that the amount of marijuana found, three (3) dime bags, was small and that seizure would not have been proper, absent the evidence of drug sales on the seized cellular phone.

9. Ingram Barge employee James Wright, a friend of a fellow student at UT Martin, testified that he purchased a Chevy Suburban from Claimant. Mr. Wright paid Claimant Five Thousand Dollars ($5,000.00) as part of the sale price, on May 27, 2011, just days before the stop by Officer Watkins. Claimant gave Mr. Wright the Title to the Suburban, once the full purchase price was paid.

10. Claimant explained that he gave Seven Hundred Dollars ($700.00) of the Five Thousand Dollars ($5,000.00) to his Mother. Claimant believed it likely that he also had some of his student loan money in his possession.

11. Claimant Burton admitted that the three (3) small bags of marijuana belonged to him, but insisted that he does not sell drugs.

12. Officer Watkins and Obion County Sheriff's Office Michael Simmons admitted that, other than the cell phone messages, they had no evidence to link Claimant Burton to illegal drug sales, as opposed to possession of the three (3) dime bags.

13. There were no baggies, scales, pipes, guns or other indicia of drug sales in the vehicle driven or on Claimant Burton's person. There were no controlled buys or police-observed and monitored drug sales involving Claimant Burton.

CONCLUSIONS OF LAW

1. The State must carry its burden of proof, by a preponderance of the evidence, that the subject currency constitutes proceeds or was obtained in an exchange, in a manner that violated the Tennessee Drug Control Act. Such violation subjects property to forfeiture pursuant to the provisions of T.C.A. §53-11-451.

2. Based on his demeanor and the lack of hesitancy in his testimony, the testimony of Mr. Wright is **CONCLUDED** to be **CREDIBLE**. Mr. Wright's

testimony is consistent with that of Claimant Burton regarding why he had Four Thousand One Hundred Twenty-Six Dollars ($4,126.00) in his possession.

3. It is **CONCLUDED** that the sale of the Suburban provides a sufficient basis for the Claimant to have such a large amount of money in his possession, absent other indicia of illegal drug sales. Since Claimant does not have a bank account, but was en route to obtain another vehicle, it is **CONCLUDED** to be reasonable that Claimant would have a significant amount of cash on his person, with which to purchase another vehicle.

4. The State contended that the presence of the three (3) dime bags, the alert of Kodiak, and the large amount of cash, standing alone without the cellular phone messages, are sufficient to constitute evidence of illegal drug sales and to forfeit the US Currency.

5. Based on review of the record overall, including the demeanor and consistency of witness statements, and in light of the testimony of the seizing Officers that the only link to illegal drug sales was the cellular phone messages of what turned out to be someone other than the Claimant, it is **CONCLUDED** that, by a preponderance of the evidence, the State **FAILED** to meet its burden of proof that the subject currency was the proceeds of, used to facilitate, or obtained in an exchange in violation of the Tennessee Drug Control Act.

6. Therefore, it is hereby **ORDERED** that the Four Thousand One Hundred Twenty-Six Dollars ($4, 126.00) in seized US Currency be **RETURNED** to Claimant Keith Burton.

This Initial Order entered and effective this _____ day of ___February ___2012.

Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of ___February___ 2012.

Thomas G. Stovall, Director
Administrative Procedures Division

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF: **DEPARTMENT OF SAFETY** **V.** **U.S. Currency of $87,179.00** **Seized from: Virender Yadav** **Date of Seizure: 06-13-11** **Claimant: Virender Yadav &** **Barry Nathanson**	**DOCKET NO: 19.01-114775J** **D.O.S. # L7007**

INITIAL ORDER

This matter was heard on November 9, 2011 before Leonard Pogue, Administrative Judge, sitting for the Commissioner of the Tennessee Department of Safety in Cookeville, Tennessee. Mr. Orvil Orr, Staff Attorney for the Department of Safety, represented the State. Claimants were present and represented by Mr. Douglas Dennis.

The issue in this case is whether the currency seized represents proceeds from a drug transaction. After consideration of the record in this matter, it is determined that the seized $87,179.00 should be returned to the Claimants. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 13, 2011, Trooper Mike Robertson of the Tennessee Highway Patrol stopped a Penske rental truck near Cookeville for speeding. Claimants Yadav and Nathanson were passengers in the truck. The driver of the truck told the trooper that the occupants of the truck had been working at the Bonnaroo music festival. A K-9 alerted on a bag behind the driver's seat and at the rear of the truck. Inside the bag was a box wrapped in duct tape containing U.S. currency. Nearby, an article of clothing was wrapped around a plastic bag

that also held U.S. currency. In the rear of the truck, a suitcase (belonging to Yadav) had clothing containing currency. Claimants told the trooper that the group made the money selling pipes at Bonnaroo; there were numerous boxes of unsold pipes in the truck. According to Trooper Robertson, the Claimants could not produce any documentation to support their claim except invoices from 2-3 years ago. The trooper admitted that Yadav told him Yadav sold pipes and Nathanson was in business with him. Trooper Robertson believes the Claimants gave inconsistent stories regarding to whom the money belonged. The trooper testified that a background check revealed that Yadav had drug charges in Switzerland and New York. Because of this and the trooper's belief that $87,137 was an excessive amount for selling pipes, as well as the trooper's perceived lack of documentation, the money was seized. Trooper Robertson noted that sometimes at Bonnaroo drugs are sold by individuals who sell merchandise at Bonnaroo. Yadav was not arrested and no narcotics or trace of narcotics were in the truck or on the person of the occupants. Nathanson had $10,000 on his person from selling pipes but the trooper did not seize this money because he did not have any criminal background and did not claim an interest in the $87,137.

2. Nathanson testified that he rented spaces for several booths at Bonnaroo to sell glass pipes and that he had done so for 5 years. He had eight people work for him this year (4 were in the truck at time of the stop and seizure). The average cost of a pipe is $30 and the booths are open 24 hours a day, every day of the festival. Nathanson explained that Yadav gives him the pipes for 30 days net, meaning Nathanson has to pay Yadav within 30 days of receipt of the pipes. Nathanson does not count the proceeds at the end of each day but hides the money (wrapped in bags, clothes, boxes) in the truck for security reasons. When stopped by Trooper Robertson, Nathanson showed the trooper his receipt for the booth rentals and said the currency belonged to both Claimants. Nathanson testified that he did not sell drugs at Bonnaroo and testified that the money seized was entirely proceeds from the selling of the pipes. He also denied any knowledge that the pipes are used with illegal drugs.

3. Yadav imports glass pipes to sell and said Nathanson was one of his customers. He attended Bonnaroo this year because he said it has big sales. He stated that he had invoices for the pipes but that the trooper only looked at last year's invoices. Yadav testified that he has never been arrested or charged with a crime anywhere and that he did not sale drugs at Bonnaroo.

CONCLUSIONS OF LAW

1. T.C.A §53-11-451(a)(6)(A) authorizes the forfeiture of:

> "Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989. . ., all proceeds traceable to the exchange, and all moneys. . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act."

2. The method of business between Nathanson and Yadav regarding the selling/paying for the pipes established that both Claimants had an interest in the $87,179 at the time of the seizure. The State has failed to carry its burden of proof to show that the $87,179.00 is proceeds from a drug transaction. Claimants offered a reasonable explanation, as well as extrinsic proof, as to why they possessed the $87,179.00.

For these reasons, it is **Ordered** that the $87,179.00 be **returned** to Claimants.

This Initial Order entered this _____ day of December, 2011.

_____
Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, this _____ day of December, 2011.

_____
Thomas Stovall, Director
Administrative Procedures Division